IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 227 of 2007

For Approval and Signature :
***HONOURABLE* MS. JUSTICE R.M. DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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STATE OF GUJARAT - Applicant(s)

Versus

RAMSAGARSINH BALVANTSINH PARIHAR - Opponent(s)

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Appearance :
MR KC SHAH APP for Applicant
OPPONENT : PRESENT

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT

Date : 11/06/2007

ORAL JUDGMENT

*H*eard the learned advocate and Opponent Shri Ramsagarsinh B. Parihar, who is present in person.

Rule returnable today. The opponent waives service of rule. The matter is heard and finally decided today.

This Revision Application under Section 397 read with section 401 CrPC has been preferred by the Government of Gujarat against the order dated 22nd February, 2007 made by the Additional Principal Judge, City Sessions Court, Ahmedabad in Inquiry Case No. 1 of 2005. By the *impugned* order, the Investigating Officer – one Mr. M.M Patel has been summoned before the Court below.

It appears that the opponent herein has lodged a complaint before the Court below in connection with alleged fraud of Rs.315 crores perpetrated by the accused [*eight in number*] upon various banks. Pursuant to the said complaint, the Court below has ordered police investigation under Section 156 [3] CrPC. Pursuant to such investigation, the police has submitted its report and has sought “C” Summary. Pending hearing on the said report, the opponent herein on 25th July, 2006 filed application for witness summons. According to the opponent-complainant, the police has failed to make fair and proper investigation, has made false and misleading report and has mislead the Court in seeking “C” summary. He, therefore, took out application requesting the Court to summon the concerned investigating officer Shri M.M

Patel before the Court to examine him. It is on this application the impugned order has been made by the learned Judge summoning the Investigating Officer Shri M.M Patel before the Court.

Mr. Shah has submitted that the *impugned* order has been made by the Court below without hearing the public prosecutor. The *impugned* order is pre-mature in as much as the Court has not yet heard the matter whether or not to accept the report submitted by the Investigating Officer and whether or not to grant “C” summary as prayed for. The complainant indeed has a right to be heard but at the stage when the court hears the matter on the report submitted by the police. At that stage, the Court may accept the report and grant “C” summary or it may order further investigation. At that time, the complainant will have a right to be heard. Before that is done, the witness summons issued to the Investigating Officer is wholly unjustified.

The Opponent has submitted his written arguments. According to him, the Court has power to summon any witness or any person for examination at any stage of investigation. The circumstances of the case do warrant exercise of power conferred by Section 311 CrPC to summon the Investigating Officer and the learned Judge has rightly issued such summons.

I do agree with Mr. Shah. The complainant indeed has a right to be heard on the matter whether or not to accept the report submitted by the police. At that stage, the Court may or may not accept the report, may or may not grant "C" summary as prayed for, or may order further inquiry. But it is too early to summon the Investigating Officer and to examine him in respect of the report submitted by the police.

In above view of the matter, the Revision Application is allowed. The *impugned* order dated 22nd February, 2007 made on Inquiry Case No. 1 of 2005 is *quashed* and set aside. The matter shall proceed before the Court below in accordance with law. It is clarified that this order shall not preclude the opponent [*complainant*] from being heard on the report submitted by the police. Rule is made absolute.

{Ms. R.M Doshit, J.}

*Prakash**